

RECEIVED  
09 MAY 13 PM 2:55  
SUPERFUND DIV.  
TECHNICAL & ENFORCEMENT  
BRANCH (6SF-T)  
May 11, 2009

Robert F. Dougherty  
320 South Boston Avenue, Suite 200  
Tulsa, OK 74103-3706  
Direct Dial: (918) 594-0412  
Facsimile: (918) 594-0505  
rdougherty@hallestill.com

**VIA FACSIMILE (214) 665-6660 & CERTIFIED MAIL, RETURN RECEIPT  
REQUESTED**

Ms. Jamie Bradsher  
Enforcement Officer (6SF-TE)  
United States Environmental Protection Agency  
Region 6  
1445 Ross Avenue  
Dallas, TX 75202

Re: Norphlet Chemical Superfund Site ("Site"), Site ID # A6N8  
Union County, Norphlet, Arkansas

Dear Ms. Bradsher:

This firm represents Tulstar Refrigerants, Inc. ("Tulstar"). As we discussed on Friday afternoon, this letter is submitted on behalf of Tulstar as Tulstar's response to Mr. Samuel Coleman's May 4, 2009 General Notice Letter, which was received by Tulstar on May 6, 2009 (the "Notice Letter"). You indicated that submission of this response today was acceptable.

The only recipients of the Notice Letter were Norphlet and Tulstar. Tulstar should not be considered a potentially responsible party for the hazardous waste problems at Norphlet's facility. Obviously, Norphlet and those individual board members, officers and employees involved in the operation of the plant have culpability. Further, Jones-Hamilton Co., 30354 Tracy Road, Walbridge, Ohio 43465 should be considered a potentially responsible party because it operated Norphlet's facility. Mr. Bob James, President of Jones-Hamilton, Mr. Brian Brooks, CFO and Mr. Evert Talbot, Manager of Jones-Hamilton's Chemical Division, are all on Norphlet's Executive Committee, with Messrs. James and Talbot also serving on Norphlet's board of directors, all as shown in Enclosure B to the Notice Letter. In addition, Mr. Evert Talbot worked at the plant several days per week, maintained an office there and ran its operations. Such operational actions and responsibility by Jones-Hamilton are evidenced by Evert Talbot's September 29, 2008 email included in Enclosure B attached to the Notice Letter, wherein Mr. Talbot represents Norphlet. See also the attached emails of August 19, 2008 and January 21, 2009 to the same effect. Accordingly, Jones-Hamilton, which is a large solvent company, should be considered a potentially responsible party instead of Tulstar and should be sent a Special Notice Letter. I have also enclosed information concerning Norphlet's current

environmental liability insurance. Upon information and belief, that policy may cover an EPA removal action at the facility and should be viewed as source of funding for reimbursement of the EPA's costs.

Unlike Norphlet and Jones-Hamilton, Tulstar was never involved in the day-to-day operations of Norphlet's facility and, other than having a couple of representatives at a ribbon cutting ceremony hosted by Norphlet, never had any employees or agents on site at the facility. Tulstar was never involved with attempts to produce HFC-134a or with any production or operation of the facility in any way. Tulstar did ship raw materials to the facility, but as outlined in this firm's February 27 letter to Tulstar (a copy of which was attached to the Notice Letter and is reattached for convenience to this letter), title to such raw materials passed to Norphlet pursuant to the terms of the attached agreement. Further, had Norphlet performed in accordance with the parties' agreement, no hazardous wastes would have been produced from the manufacturing process. Rather, the HFC-134a and one other valuable product, HCL, would have been produced. Tulstar had agreed to purchase the produced HFC-134a and Jones-Hamilton had contractually committed to purchase all of the HCL. Thus, Tulstar should not be considered a potentially responsible party as a result of its role in supplying raw materials or otherwise, as discussed in detail the attached February 27<sup>th</sup> letter. Finally, it is very important to note that Tulstar, as a good corporate citizen but without ever admitting any responsibility, has already utilized its contacts in the industry and facilitated the removal of the raw material, hydrofluoric acid or HF, from the facility, which has been completed.

Tulstar is a stand-alone corporation which had a contractual relationship with Norphlet Chemical, Inc. ("Norphlet"). There is no Tulstar Refrigerants, LLC. The agreement attached to the Notice Letter was replaced by a subsequent agreement correctly naming Tulstar Refrigerants, Inc. as a party along with Norphlet. I have attached a copy of the correct agreement along with an amendment that was subsequently executed by the parties. Accordingly, Tulstar is the appropriate entity to respond to the Notice Letter, and we ask you to direct all future correspondence concerning this matter to Tulstar. Tulstar is also a company with very limited resources. Therefore, as suggested in Enclosure A to the Notice Letter, please provide Tulstar with information on "Ability to Pay Settlements."

Tulstar is not a potentially responsible party at this Site for the reasons stated herein and in more detail in the February 27, 2009 letter contained in Enclosure B to the Notice Letter and attached hereto. Therefore, Tulstar declines to perform a removal action at the Site. However, Tulstar is willing to continue discussions with the EPA. We understand that there remains unused trichloroethylene (TCE) at the Site. As a chemical broker, Tulstar could, perhaps, assist EPA in finding a home for this unused raw material, just as Tulstar has already assisted Norphlet in placing the unused hydrofluoric acid (HF).

Ms. Jamie Bradsher

May 11, 2009

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My client would very much appreciate the opportunity to clarify its position that it is not a potentially responsible party and is willing to answer questions or provide additional information concerning Jones-Hamilton to assist with your investigation. As such, please do not hesitate to contact me.

Sincerely,



Robert F. Dougherty

Enclosures

xc: **Via Facsimile & Certified Mail, Return Receipt Requested**

James Turner, Esq.

Senior Attorney (6RC-S)

United States Environmental Protection Agency

Region 6

1445 Ross Avenue

Dallas, TX 75202

Fax: 214-665-6460

Mark Nagle (via e-mail)

Michael D. Graves Esq. (via e-mail)

**COPIES EVERT TALBOT E-MAILS SHOWING JONES-  
HAMILTON CO.'S HEAVY OPERATIONAL  
INVOLVEMENT AT NORPHLET'S FACILITY**

**SEE ATTACHED.**

**Elena Forsyth**

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**From:** Evert Talbot [etalbot@jones-hamilton.com]  
**Sent:** Tuesday, August 19, 2008 9:54 AM  
**To:** tulstar@tulstar.com  
**Cc:** Brian Brooks; David Henry; Vic Forte; Robert James  
**Subject:** FW: Hydrofluoric Acid for Norphlet Chemical

Mark Nagle & Phil Bates:

Please be aware of this correspondence below to Jones-Hamilton Co. (for Norphlet) from MEXICHEM regarding supply of HF acid for TULSTAR and/or Norphlet direct.

As you have suggested, we have asked them to supply Norphlet on our own and are not at all surprised by their response.

When you have a chance and for the records, TULSTAR should also advise Norphlet Chemical in writing that your agreement with MEXICHEM has been cancelled and therefore you will not be able to supply HF acid for the current tolling agreement.

Thanks

**EVERT TALBOT**  
Manager-Chemical Division  
Jones-Hamilton Co. (For Norphlet Chemical)  
225-763-9990 Cell 225-978-1798

---

**From:** Arnoldo de Leon Romo [mailto:adeleon@mexichem.com]  
**Sent:** Tuesday, August 19, 2008 9:34 AM  
**To:** Evert Talbot  
**Cc:** David Henry; Vic Forte; Linda Jackson; Brian Brooks; Hector Valle Martin  
**Subject:** RE: Hydrofluoric Acid for Norphlet Chemical

Dear Evert.. Thanks for your interest on Mexichem Fluor HF supply, my comments are as follows:

1. Due operative problems experienced by Norphlet during the start up, our HF supply contract with Tulstar was automatically cancelled
2. At least for the following 3 years , our HF plant will keep running sold out, if something change be sure that I will call you.

**Arnoldo de Leon Romo**  
Director Comercial  
adeleon@mexichem.com  
Tel. (868) 811 10 56  
Fax (868) 811 10 80  
www.mexichem.com

**Mexichem**   
Fluor

---

8/19/2008

**De:** Evert Talbot [mailto:etalbot@jones-hamilton.com]  
**Enviado el:** Lunes, 18 de Agosto de 2008 08:59 a.m.  
**Para:** Arnol'do de Leon Romo  
**CC:** David Henry; Vic Forte; Linda Jackson; Brian Brooks  
**Asunto:** Hydrofluoric Acid for Norphlet Chemical

Arnol'do:

The Jones-Hamilton Co. out of Walbridge, Ohio is heavily involved in the rebuilding of the Norphlet Chemical 134a facility at Norphlet, Arkansas. We understand Mexichem had an agreement to supply hydrofluoric acid to TULSTAR for this facility; however the product is no longer available.

We are anticipating start up of this plant prior to the end of this year. If at all possible, we would like to speak with MEXICHEM regarding shipments of Hydrofluoric acid to this plant for the foreseeable future.

Please contact me at your earliest convenience to discuss this matter even if the product is still not available.

Best personal regards,

Evert Talbot  
Manager - Chemical Division  
Jones-Hamilton Co. (For Norphlet Chemical)

225-763-9990 Cell - 225-978-1798

8/19/2008

**Elena Forsyth**

---

**From:** Evert Talbot [etalbot@jones-hamilton.com]  
**Sent:** Wednesday, January 21, 2009 10:14 AM  
**To:** Tulstar@Tulstar.com  
**Cc:** Brian Brooks; Robert James; Ray Hahn; Victor Haas; vrforte@norphletchem.com  
**Subject:** Loading of Hydrofluoric acid and Trichloroethylene

Mark and Phil:

Confirming our telephone conversations of yesterday, the State of Arkansas is also pushing us hard to move the HF and TCE out of Norphlet Chemical. Per your request, we have asked for carrier help via truck from Honeywell. They have now advised that due to the high moisture content, they are not willing to assist us by using one of their trailers, the driver and the truck itself. Apparently high moisture grossly accelerates the corrosive effects of HF.

However, we have informed them that the MEXICHEM rail car is still at Norphlet. They might want to look into taking the product by rail. We will need TULSTAR to seek permission from MEXICHEM to use this car if Honeywell takes the product. Please let me know as soon as possible what MEXICHEM decides. Obviously they will have a severe RISK if the product is loaded into their car and moved to another customer.

Once and IF they give us permission to load into the railcar, we will do so right away. I am not optimistic that Honeywell will pay anything for this HF acid.

Also be reminded that on the 10<sup>th</sup> of February, we might not have insurance coverage on the plant and the chemicals on site. This could be a major problem. Also, on or about the same date, the only 2 remaining employees that are fully trained and certified for HF handling will be leaving the Norphlet plant site to accept other permanent jobs. At that point, we will not have anyone on site to load trucks or rail cars of HF.

Please give this matter your highest priority in order to move this product away from the neighborhood and the high school next door.

Jones-Hamilton will assist in any way we can but the CLOCK is now working against all of us.

Regards,

EVERT

5/7/2009

**COVERAGE INFORMATION FOR NORPHLET  
CHEMICAL, INC.'S EXISTING INSURANCE POLICIES**

**SEE ATTACHED.**



**IRONSHORE***your safe harbour***IronEnviro Insurance Binder**

**Product:** IronEnviro Protector Package  
**Policy Number:** 010G00918001  
**Policy Period:** From: 02/14/2009 to: 02/14/2010  
**Named Insured:** Norphlet Chemical  
**Issuing Company:** Ironshore Indemnity Inc  
**Producer:** Environmental Underwriting Solutions

*General Liability***Coverages and Limits of Liability:****Coverage I: (Occurrence Basis)**

Coverage A: General Liability Bodily Injury and Property Damage  
 Coverage B: Short-Term Pollution Bodily Injury and Property Damage  
 Coverage C: Non-Owned Site Pollution Bodily Injury and Property Damage  
 Coverage D: Hostile Fire and Building Equipment  
 \* Coverage E: Products Pollution and Exposure Liability  
 Coverage F: Contractors Pollution Liability  
 \* Coverage G: Transported Cargo Pollution Liability  
 Coverage H: Personal and Advertising Injury Liability

**Coverage II:**

Coverage A: Medical Expense  
 Coverage B: Employee Benefits Liability

**Coverage III: (Claims Made Basis)**

Coverage A: Site Pollution Legal Liability - Bodily Injury and Property Damage  
 Coverage B: Mandated On-Site Clean Up Costs  
 Coverage C: Off-Site Clean-Up Costs

**Coverage IV: (Claims Made Basis)**

Coverage A: Professional Liability

Each Occurrence Limit:	\$1,000,000
General Aggregate Limit:	\$2,000,000
Products/Completed Operations Aggregate Limit:	\$2,000,000
* Pollution Legal Liability (Each Loss Limit):	\$1,000,000
Damage To Premises Rented To You Limit:	\$300,000
Medical Expense Limit:	\$25,000

**Deductibles:**

Short Term Pollution	\$25,000
Non-Owned Site Pollution	\$25,000
Employee Benefits	\$1,000
Coverage III	N/A (Coverage Excluded)
Coverage IV	N/A (Coverage Excluded)
All other coverage	\$0

**Projected Annual Revenue: \$1,000,000**

The Premium amount(s) stated above does not include surplus lines tax, or surplus lines fees

The Premium amount(s) stated above does not include the premium for Terrorism Risk Insurance Act Coverage. The insured opted to decline this coverage



# IRONSHORE

*your safe harbour*

## IronEnviro Insurance Proposal

Product: IronEnviro Casualty Umbrella  
Policy Number: 010G00918002  
Policy Period: From: 02/14/2009 to: 02/14/2010  
Named Insured: Norphlet Chemical  
Issuing Company: Ironshore Indemnity Inc.  
Producer: Environmental Underwriting Solutions  
One Perimeter Park South, Suite 405N  
Birmingham, AL 35243

Umbrella

### Coverage and Limits of Liability

- Each Occurrence, Offense, or Loss \$10,000,000
- Products/Completed Operations Aggregate Limit \$10,000,000
- All Other Coverage Combined Aggregate \$10,000,000  
(Except Automobile Liability; which is not subject to the Aggregate Limit)

### Underlying Coverage Contemplated:

Coverage	Exposure	Exposure Amount
General Liability	Revenue	\$6,000,000
Pollution	Sites	1 (S&A Coverage)
Auto	Vehicles	NA
Employer's Liability	Employees	NA

Self Insured Retention: \$10,000

The Premium amount(s) stated above does not include surplus lines tax, or surplus lines fees

The Premium amount(s) stated above does not include the premium for Terrorism Risk Insurance Act Coverage. The insured opted to decline this coverage.

### Underlying Coverage:

#### 1. IronEnviro Protector Package (A Combined General Liability and Pollution Policy)

Carrier: Ironshore Indemnity Inc.  
Policy Period: 02/14/2009 to: 02/14/2010  
Policy Number: 010G00918001  
Limits:

Each Occurrence Limit: \$1,000,000  
General Aggregate Limit: \$2,000,000



# IRONSHORE

*your safe harbour*

Products/Completed Operations Aggregate Limit:	\$2,000,000
Pollution Legal Liability (Each Loss Limit):	\$1,000,000
Employee Benefits:	\$1,000,000
Damage To Premises Rented To You Limit:	\$300,000
Medical Expense Limit:	\$25,000

## 2. Commercial Auto

Carrier: NA  
Policy Period: to:  
Policy Number:  
Limits:

## 3. Employer's Liability

Carrier: NA  
Policy Period: to:  
Policy Number:  
Limits:



## **IRONSHORE SPECIALTY INSURANCE COMPANY**

1 Exchange Plaza  
(55 Broadway) 12<sup>th</sup> Floor  
New York, NY 1006  
(877) IRON411

### **ENVIRONMENTAL PROTECTION INSURANCE COVERAGE PACKAGE (EPIC PAC) TABLE OF CONTENTS**

#### **SECTION I – COVERAGES**

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##### **Coverage B: First and Third Party On-Site Clean-Up Cost**

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##### **COVERAGE PART IV – PROFESSIONAL LIABILITY**

#### **SECTION II – WHO IS AN INSURED**

#### **SECTION III – LIMITS OF INSURANCE AND DEDUCTIBLE**

#### **SECTION IV – CONDITIONS**

#### **SECTION V – DEFINITIONS**

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**HALL, ESTILL FEBRUARY 27, 2009 LETTER TO  
TULSTAR REFRIGERANTS, INC.**

**SEE ATTACHED.**

February 27, 2009

**VIA E-MAIL**

Elena Forsyth  
Tulstar Refrigerants, Inc.  
5510 South Lewis Avenue  
Tulsa, OK 74105

Re: Norphlet Chemical, Inc.

Dear Elena:

As requested, I have reviewed the memorandum dated February 3, 2009 written by David Choate, an attorney with the Friday, Eldredge & Clark law firm in Little Rock to David Nevala, Brian Scoggins and the Arkansas Economic Development Commission (the "Memo"). The Memo discusses responsibility for raw materials and hazardous materials at the plant owned and operated by Norphlet Chemicals, Inc. ("Norphlet") in Norphlet, Arkansas.

The Memo concludes that "[g]iven the broad reach of CERCLA to impose liability on those who arranged for disposal of hazardous substances, along with the Court's holding and its analysis in the *Aceto* case, it is likely that Tulstar would be liable for response costs associated with any release or threatened release from Norphlet." The word "release" refers to a release of hazardous substances. I strongly disagree with this conclusion for the reasons stated below.

Pursuant to the "Agreement" dated February 24, 2005 (the "Agreement") entered into between Norphlet and Tulstar Refrigerants, Inc. ("Tulstar"), Tulstar agreed to purchase HFC-134a and to supply Norphlet with the raw materials required to manufacture HFC-134a (i.e. HF and TCE). In conjunction with the parties' entry into the Agreement, Norphlet represented itself as having the expertise and capability of producing HFC-134a. As you have indicated, the manufacturing process for HFC-134a involves the input of the two types of raw materials, HF and TCE, and if performed correctly, produces HFC-134a and one usable and valuable by-product, HCL. The Jones-Hamilton Company had contractually agreed to purchase the HCL from Norphlet and to handle this product. Thus, as a result, had the manufacturing process been properly and correctly carried out, all of the materials produced would have been marketable and in fact, sold pursuant to agreements in place, and thus, there would be no hazardous waste to dispose of. You have also indicated that a large percentage of the raw materials were negligently mishandled and/or improperly processed by Norphlet, resulting in an unusable "soup" instead of HFC-134a and HCL. Finally, Tulstar has been advised that unused quantities of the raw material, HF, which remain at Norphlet's facility are damaged and no longer in their pure state. Due to the apparent negligence, mishandling and/or inappropriate storage by Norphlet, the water

content has increased from less than one hundredth of a percent (.01%) upon delivery to Norphlet to more than three percent (3%) today, which affects the marketability and usability of the HF, and creates very significant obstacles in obtaining transportation of the material.

In support of its conclusion, the Memo cites the case of *United States v. Aceto Agric. Chems Corp.*, 872 F.2d 1373 (8<sup>th</sup> Cir. 1989) and a couple of other decisions which essentially cite and apply the *Aceto* court's rationale. The *Aceto* case did find that a supplier of raw materials pursuant to a tolling arrangement with a manufacturer/formulator could be potentially liable for releases of hazardous substances by the manufacturer/formulator under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). That act imposes liability for a release or threatened release of hazardous substances upon any person who "arranged for disposal or treatment of hazardous substances owned or possessed by such person . . . at any facility . . . owned or operated by another party." 42 U.S.C. § 9607(a)(3).

The Memo asserts that the factual similarities between the situation in the *Aceto* case and the current situation are clear. However, the Memo conveniently overlooks a critical distinction. The *Aceto* decision was based upon the plaintiffs' allegations "that because the generation of pesticide-containing wastes is inherent in the pesticide formulation process, [the formulator] could not formulate defendants' pesticides without wasting and disposing of some portion of them" and that "defendants could not have hired [the formulator] to formulate their pesticides without also 'arranging for' the disposal of the waste." *Aceto*, at 1379 and 1381. The court's ruling was based on the facts, among others, that there was no transfer of ownership of the hazardous substances at issue (which is another distinction to the current situation as discussed below) and that hazardous waste is necessarily generated and disposed of contemporaneously with the formulation process for producing the pesticides at issue. *Id.* Other cases cited in the Memo support this conclusion because they cite the *Aceto* decision in holding that suppliers to a formulator used to create a final product can be held liable as arrangers under 42 U.S.C. §9607(a)(3) where (1) the supplier retains an ownership interest in the materials throughout the formulation process as well as the finished product, (2) the generation of hazardous wastes was inherent in the formulation process, and (3) wastes were in fact generated and disposed. *U.S. v. Hercules, Inc.*, 247 F.3d 706, 720 (8<sup>th</sup> Cir. 2001); *U.S. v. Vertac Chemical Corp.*, 966 F. Supp. 1491, 1501 (E.D. Ark. 1997).

With regard to Norphlet's situation, the generation of hazardous wastes was not inherent in the formulation process. In fact, had Norphlet properly performed its obligations under the Agreement and produced HFC-134a and HCL as promised, no hazardous wastes would have been produced. This fact clearly distinguishes the Norphlet-Tulstar facts from the facts in the *Aceto* case, and exposes a fatal flaw in the Memo's analysis and conclusion.

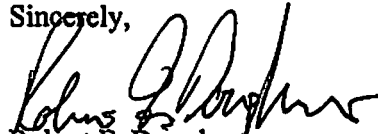
The Memo also asserts that Tulstar "likely did retain ownership of the raw materials delivered to Norphlet." However, the Memo correctly cites Section 1.B of the Agreement which provides that "Norphlet agrees to pay to Tulstar all costs and expenses related to such raw materials if Norphlet fails to manufacture HFC-134a in sufficient marketable quantity or quality as set forth herein." Obviously, Norphlet has failed to manufacture HFC-134a in accordance with the terms of the Agreement. The plain intent of Section 1.B is that title to the raw materials

Elena Forsyth  
February 27, 2009  
Page 3

was to transfer to Norphlet upon its failure to produce HFC-134a pursuant to the Agreement. Such failure has occurred and thus, title has transferred and Norphlet now has a payment obligation to Tulstar therefor. Tulstar has previously demanded payment for the raw materials from Norphlet in the amount of \$270,000, which was the amount of its costs related to the raw materials.

Based on the foregoing assumed facts and legal analysis, Tulstar should not be subject to liability under CERCLA for any release or threatened release of hazardous substances from Norphlet's facility, and the Memo's conclusion to the contrary is incorrect.

Sincerely,



Robert F. Dougherty

RFD:

963099.3:812845:00700



**CORRECT/RESTATED AGREEMENT BETWEEN  
TULSTAR REFRIGERANTS, INC. AND NORPHLET  
CHEMICAL, INC. AND AMENDMENT**

**SEE ATTACHED.**

### AGREEMENT

This Agreement is made and entered into by and between Norphlet Chemical, Inc. (hereinafter "Norphlet"), and Tulstar Refrigerants, Inc. (hereinafter "Tulstar"), and sets forth the terms and conditions of their agreement as to the supply of raw materials, exclusive output of HFC-134a of a minimum stated amount, and right of first refusal thereafter.

WHEREAS, Norphlet is in the business of producing HFC-134a; and

WHEREAS, Tulstar has need for all quantities of HFC-134a that Norphlet can manufacture;

NOW, THEREFORE, for and in consideration of the sums herein expressed and the mutual promises herein contained, be it agreed as follows:

1. SCOPE OF AGREEMENT:

A. Exclusive Output: Tulstar agrees to purchase all HFC-134a Norphlet can manufacture and produce up to a minimum of 15 million pounds of HFC-134a per Output Term. The phrase "Output Term" as used herein shall mean the period commencing on the date Norphlet first produces HFC-134a that conforms to standards stated herein and continuing for a twelve (12) month period thereafter, subject to automatic annual renewal as provided herein. Tulstar agrees to pay Norphlet a tolling fee of \$0.51/lb for production of first 15 million pounds of HFC-134a and \$0.50/lb for all production of HFC-134a thereafter, subject to and conditioned upon (i) Tulstar's obtaining, in Tulstar's sole discretion and judgment, satisfactory pricing for raw materials; (ii) Norphlet producing said volume of HFC-134a within all applicable legal considerations, such as patents, licenses, environmental regulations, and at a quality that conforms with U.S. Commercial

Standards and meets the most current ARI 700 specifications; and (iii) based on all by-products of production (i.e., HCL) being delivered to a proper destination. Provided market conditions and capacity allow, the Parties intend to have Norphlet toll manufacture an estimated 20-50 million pounds of HFC-134a for Tulstar on an annual basis.

B. Raw Materials: Tulstar will supply Norphlet with raw materials (HF and TCE) required for the manufacture of HFC-134a that is tolled for Tulstar, provided (i) Norphlet agrees to indemnify and hold Tulstar harmless as set forth herein for any loss or harm related to such raw materials after Norphlet or its agent(s) take possession of such raw materials; (ii) Norphlet agrees to pay to Tulstar all costs and expenses related to such raw materials if Norphlet fails to manufacture HFC-134a in sufficient marketable quantity or quality as set forth herein; and (iii) Norphlet agrees to pay Tulstar an agreed amount for raw materials used to manufacture HFC-134a that is either sold to a third party or not purchased by Tulstar consistent with the terms of this Agreement.

C. Right of First Refusal: The Parties agree that Tulstar shall be given the option to purchase all or any portion of HFC-134a manufactured in excess of 15 million pounds of HFC-134a during the Output Term at the price set forth herein. Tulstar shall give notice to Norphlet within 30 days of its intent to purchase all or any portion of such HFC-134a produced by Norphlet in excess of 15 million pounds after receiving notice from Norphlet of such excess production. In the event Tulstar does not purchase all the HFC-134a produced by Norphlet, then Norphlet shall be free to sell such excess production not purchased by Tulstar to Honeywell or LSB Industries at such prices as Norphlet may negotiate with Honeywell or LSB Industries.

2. ADDITIONAL STANDARDS:

Regarding the manufacturing process by Norphlet, it is agreed that Norphlet should produce one pound of HFC-134a and the by-product HCL with 1.720 pounds of TCE and 0.0832 pounds of HF. This is based on 95% of theoretical. In the event Norphlet does not achieve the optimum ratio above expressed 95%, adjustments in the price of raw materials shall be negotiated by these parties.

3. TERM AND TERMINATION:

This Agreement shall be for a term of one (1) year and shall automatically renew for successive one year terms. This Agreement and any renewal thereof may be terminated by either Party by written notice of that Party's intent not to renew this Agreement submitted to the other Party at least 30 days prior to the renewal date.

4. INSURANCE AND INDEMNITY:

Norphlet agrees to procure and maintain general liability insurance, umbrella ~~policy, and workers' compensation insurance~~ in coverage amounts of 10 Million Dollars, and name Tulstar as additional insured on all policies during the term of this Agreement and any Output Term; Norphlet agrees to supply Tulstar with a current certificate of insurance to verify compliance with this subsection. Norphlet hereby agrees to indemnify, defend and hold harmless Tulstar, its parent, subsidiaries, and related companies, its licensees, affiliates, and their respective officers, directors, agents, and employees from any and all third party claims, actions or proceedings of any kind and from any and all damages, liabilities, costs and expenses (including reasonable legal fees and costs) relating to or arising out of any breach of any of the warranties, representations or agreements hereunder or otherwise in connection with the manufacture, production,

storage, distribution, or otherwise related in any way to the HFC-134a or the raw materials thereto, except for gross negligence by Tulstar.

5. CONFIDENTIALITY:

The Parties shall hold in confidence the terms of this Agreement and any negotiations relating thereto. Neither Party shall disclose, without the other Party's prior consent to any third party (other than its respective employees, directors, officers, attorneys and agents engaged in this transaction, in their capacity as such, on a need-to-know basis), any information with respect to the terms and provisions of this Agreement except: (a) to the extent necessary to comply with law or the valid order of a court of confident jurisdiction, in which event the party making such disclosure shall so notify the other Party as promptly as practicable (if possible, prior to making such disclosure) and shall seek confidential treatment of such information; (b) as part of its normal reporting or review procedure to its parent company, banks, auditors, investment bankers, underwriters and/or attorneys (collectively, "Reporting Parties"), provided that such Reporting Parties agree to be bound by the provisions of this paragraph; (c) in order to enforce to its rights pursuant to this Agreement; and (d) when such information is otherwise publicly available.

6. REMEDIES:

No action or omission by either Party shall constitute a breach of this Agreement unless the other Party first gives notice in writing by setting forth the alleged breach or default, and the Party receiving such notice does not cure the same within a reasonable period of time. The Parties agree that if the obligations hereunder are breached, the

damage, if any, caused to the other Party may be irreparable and sufficient to entitle the non-breaching Party to injunctive or other equitable relief. All remedies afforded herein or otherwise available to either Party hereto shall be cumulative, and no one such remedy shall be exclusive of, or shall be considered a waiver of, any other.

7. MISCELLANEOUS:

A. Power and Authority: Norphlet hereby represents, warrants and covenants that it is a corporation duly formed and validly existing in good standing under the laws of the State of Arkansas and has the requisite power and authority to enter into this Agreement and to perform its obligations hereunder. Norphlet represents and warrants that the individual executing this Agreement on behalf of Norflet has the authority and power to bind Norphlet hereunder.

B. Notices and Amendments: All notices shall be in writing and shall be transmitted by a Party to the other by mail, facsimile, express mail, or personal delivery.

~~.....~~ ~~-----~~ No amendment or modification of this Agreement shall be valid unless such amendment or modification is in writing and signed by an authorized representative of both Parties.

C. Entire Agreement and Severability. This Agreement represents the entire understanding and agreement between the Parties, and supersedes all previous statements, representations, writings, or other agreements between the Parties as to the subject matter contained herein. In the event that any provision in this Agreement is deemed to be void or otherwise unenforceable, such provision shall be disregarded and the remainder of this Agreement will remain in full force and effect in all other respects as if the unenforceable provision had not been a part of this Agreement. This Agreement is not intended to

create a joint venture or partnership or similar relationship, and both Parties expressly deny any such relationship.

D. Governing Law. The substantive laws (as distinguished from the choice of law rules) of the State of Arkansas applicable to contracts shall govern the construction and interpretation of this Agreement, the performance by the Parties of the respective obligations hereunder, and all other causes of action (whether sounding in contract or in tort) arising out of or relating to this Agreement or the termination of this Agreement.

WITNESS our hands this 24 day of February, 2005.

Norphlet Chemical, Inc.

By: [Signature]

Title: President

Tulstar Refrigerants, Inc.

By: [Signature]

Title: PRESIDENT

### AMENDMENT TO AGREEMENT

This Amendment to Agreement is made and entered into by and between Norphlet Chemical, Inc. (hereinafter "Norphlet"), and Tulstar Refrigerants, Inc. (hereinafter "Tulstar"). This Amendment shall serve to modify the Agreement between the parties hereto dated the 13<sup>th</sup> day of December, 2005 ("the Agreement"), with respect to the supply of raw materials and the exclusive output of HFC-134a.

WHEREAS, Norphlet and Tulstar entered into the Agreement whereby Tulstar shall purchase HFC-134a from Norphlet; and

WHEREAS, the Agreement provides that Tulstar shall be responsible for the disposal of all by-products of the production process of Norphlet in making the HFC-134a, including the by-product HCL; and

WHEREAS, it is the intention of the parties to amend the Agreement to provide for a contrary disposition of the by-product HCL;

NOW, THEREFORE, for and in consideration of the mutual promises herein expressed and other good and valuable consideration, be it agreed as follows:

1.

The by-product HCL which will result from the manufacturing process of Norphlet in the production of HFC-134a shall be sold by Norphlet to Jones-Hamilton Company (hereinafter "Jones"). Norphlet shall negotiate with Jones a per ton price for the HCL which shall be paid or credited directly to Norphlet by Jones for the HCL purchased from Norphlet until a loan hereafter described is repaid. In this regard, by separate agreement, Norphlet has borrowed the sum of \$3,000,000.00 with interest thereon from Jones, and from the proceeds of the HCL sold by Norphlet to Jones, shall be



credited to the account of Norphlet for the indebtedness of Norphlet to Jones, together with any interest and other agreed costs for the financing.

2.

After Jones has been repaid the \$3,000,000.00 loan amount, together with interest and other agreed costs of financing, Jones shall continue to purchase the HCL from Norphlet. After the repayment of the loan amount, however, Norphlet shall pay 50% of all amounts received from Jones for the HCL to Tulstar so long as Norphlet continues to produce and Jones continues to buy the HCL.

3.

All other by-products of the production process for HFC-134(a) shall be disposed of by Tulstar according to the Agreement between these parties.

4.

All other aspects of the Agreement are hereby ratified and shall remain in full force and effect except to the extent of the Amendment hereby made.

Norphlet Chemical, Inc.

By: John L. Gervin  
Title: C.E.O.

Tulstar Refrigerants, LLC

By: Dr. Mark N. Zie  
Title: President